CASE NUMBER: 18-2153

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

J.F.S, *a minor child, by next friend and sibling,* MATTHEW P. STARBUCK

Plaintiff - Appellant

V

SCHOOL BOARD OF WILLIAMSBURG - JAMES CITY COUNTY

Defendant - (*Not in interest)*

SUPPORTING BRIEF OF MINOR PLAINTIFF - APPELLANT

from the

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

NEWPORT NEWS DIVISION

CIVIL ACTION NUMBER 4:18cv63

HONORABLE MARK S. DAVIS, *presiding.*

On Brief of Guardian Appellant

Matthew P Starbuck

General Guardian of Minor Plaintiff J.F.S.

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Williamsburg, Virginia

23185-7947

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On Supporting Brief

(SIGNATURE REDACTED)

J.F.S

Minor Plaintiff

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III. IF DERIVED OF APPOINTED COUNSEL

If the alleged claims I have made are correct then I have been victim of a violation of my Constitutional rights. I have brought these claims before the United States District Court of Eastern Virginia Newport News Division (The "District Court"), but they have dismissed the action because (I) I am a minor child and therefore cannot file legal proceedings, (II) the Federal Courts are clear that non attorneys cannot represent others, (III) that Guardian(s) and Parent(s) cannot file their claims for or on the behalf of their children, unless they are attorney(s), because they lack the legal knowledge to protect the rights of the minor, and (IV) as the action is filed *Pro Se* the Court cannot allow the case to proceed without counsel. I will not make a moot point by trying to challenge this, however I will challenge the District Court's denial to appoint counsel. As current case law stands the Courts have the discretion to appoint counsel, especially in civil cases, however there are standards which are to be met. The Courts are obligated to not cause undue hardship onto a minor child because " "[T]he infant is always the ward of every court wherein his rights or property are brought into jeopardy, and is entitled to the most jealous care that no injustice be done to him." ***Osei - Afriyie v Medical College of Pennsylvania, 937 F .2nd 876 (3rd Cir 1991).*** This implicitly means every action made in dealing with the minor has to be calculated. As the Courts are

the overall upholders of rights, especially those of minors, it is the implied obligation of Courts to allow alleged violations of rights to be heard, especially in the case of a minor. That is why the Courts agree that "It goes without saying that it is not in the interests of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected." ***Cheung v Young Orchestra Foundation of Buffalo, 906 F .2nd 59 (2nd Cir. 1990).*** There are generally three methods of obtaining an attorney, (I) To hire an attorney, (II) to get an attorney to work with and for you *Pro Bono,* (III) to have the Courts appoint counsel. As evident by this appeal and the action precedently being filed as *In forma pauperis* I do not have, nor does Mr. Matthew Starbuck have, the financial ability to hire an attorney. As evident to the District Court Mr. Matthew Starbuck and I have attempted to secure *Pro Bono* counsel, or counsel willing to accept a federal question case on a contingency basis, but the search as returned empty. This leaves only one method to secure counsel for this case to even be heard and that is to get an attorney appointed. If I cannot secure appointed counsel, the only chance I would have to get this case heard is after April, because I would have turned eighteen by then. To push back this case until then would lead to undue hardships because the suspension in question would still be on record and it is still a mark on

my honor and good name. If this Court holds that the case has merit, but does not appoint counsel, it is causing undue injustice because of either age, an uncontrollable factor, and/or financial ability which would hurt the ideological principle the United States Courts of Appeals holds dear. The eighth circuit stated "it is important that no prisoner be denied justice because of his poverty" ***Higgins v Steele, 125 F .2d 366 (8th Cir 1952)*** Although I am not a criminal prisoner, this ideal should still apply to all Courts of Law. I believe that appointing counsel, while considering one of the factors being the "IFP" application, is not unheard of. It is a practice the United States Supreme Court engages in "Since Gideon was proceeding *in forma pauperis*[1], we appointed counsel to represent him" ***Gideon v Wainwright, 372 US 335 (1963)***

[1] (Emphasis added)

IV. ARGUMENTS FOR APPOINTMENT OF COUNSEL

In all civil cases regarding the appointment of counsel, what I will be referring to as the *Hodge* test, it should be used as it derives from the way the Courts "should first determine whether the indigent's position seems likely to be of substance. If the claim meets this threshold requirement, the court should then consider the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination." ***Hodge v Police Officers, 802 F .2nd 58 (2nd Cir 1986)*** I will address substantial claim later. If the threshold is met "the court should then consider the indigent's ability to investigate the crucial facts" ***Hodge*** Insofar, Mr.Matthew Starbuck and I have done this; however, all relevant factors must considered and taken all together and counted overall "whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder,"***Hodge***. At the moment, there is no conflicts of evidence which could be cross examined as the defendant was not given a chance to respond due to the action being dismissed early on. " the indigent's ability to present the case"***Hodge*** as the Courts are clear that a

parent/guardian cannot represent anyone else, especially their minors, so Mr Matthew Starbuck does not possess the ability to do so and as a minor child, the Courts prevent me from presenting the case. Therefore, there is no ability over all to present the case. “the complexity of the legal issues”***Hodge***, although I am quoted in the dismissal order as saying “only requires common reason," would not be "impractical for a *Pro Se* litigant"*Dismissal Order.* I simply stated the need for reason and said it would not be impractical, I didn’t say it would be easy or likely to win. I would also like to address that the Courts permit exceptions to the preventing parents representing their child in cases of filing for Social Security. I agree that Social Security proceedings are so easy an appointment of counsel would not be needed, but in other cases, especially dealing with the Constitution, they cannot represent their child. Therefore, I suggest that this case, being a matter of Constitutional law, where a minor child cannot be represented by a non attorney, qualities as a complex legal issue, again as stated above this would not be unreasonable as the United States Supreme Court appoints counsel for *In forma pauperis* applicants, especially over Constitutional issues.

V. ARGUMENTS FOR SUBSTANTIAL CLAIM

First there must be a substantial claim. I refer back to the Complaint, *J.F.S Compl.* for the challenges related to due process “J.F.S. was removed from class and forced to remain in seclusion (in-school suspension), hence referred to as ISS for the purposes of this complaint, for “his safety”, ”without notification of his parent, for the remainder of the academic day, without being informed of the reasons for which he was there” *Compl.* the District Court denied this as a substantial claim because “Based on these alleged facts, it appears to the Court that the Defendant conducted an"informal give-and-take between student and disciplinarian" with respect to J.F.S.'s short-term suspension "as soon as practicable" after the alleged misconduct occurred.”*Dismissal Order* The key here being “Based on these alleged facts;” however, the District Court did (I) misinterpret the facts in regards to the post suspension meeting, (II) does not acknowledge that in the alleged facts I was put in ISS ”without notification of his parent, for the remainder of the academic day , without being informed of the reasons for which he was there”. If the former is the truth than I point to the Complaint where it alleges the fact that the meeting was called by “Assistant Principal Howard Townsend scheduled a meeting the following Tuesday to discuss protection plans for J.F.S. in the event any retaliation occurred.”*Compl* The alleged

facts show the meeting was for ‘protection plans”, not an informal hearing. If the latter, other than the reason I already stated, the District Court’s claim fails again due to the alleged facts saying “Assistant Principal Townsend, of Jamestown High School informed Suzanne that the placement of J.F.S. in ISS was for “his own safety” out of concern for “retaliation from other students.”*Compl* The alleged facts say the ISS was not for “discipline” but for “his own safety” which means I was held in punishment, deprived from my educational property, not for the event or my actions but because of an unfounded belief for “his own safety” although against my clearly stated consent. Although this may seem small “whether due process requirements apply in the first place, we must look not to the "weight" but to the *nature* of the interest at stake.” ***Board of Regents of State Colleges v Roth 408 US 564 (1972)*** Therefore, I conclude that the District Court’s analysis of the substantial claim for Due Process is flawed and must be reviewed. On the substantial claim of a First Amendment violation the District Court denied this claim because “Under these particular circumstances, the Court finds that the factual allegations set forth in Mr.Starbuck's Complaint do not present a substantial First Amendment claim that would warrant the appointment of counsel.”*Dismissal Order* addressing “Mr.Starbuck alleges that (i) the day after a school shooting occurred in Parkland, Florida ,a teacher overheard a conversation in which J.F.S.

discussed "the intent of the shooter," the shooter's capability to inflict "more harm had he wanted to, "the shooter's "possession of explosives," the length of “time the shooter was left alone within the building unchallenged by local law enforcement," and the shooter's "use of the fire alarm to lure students out," and (ii) Defendant considered J.F.S.'s remarks to be a threat, or at least a"classroom disturbance," that justified a short-term suspension”*Dismissal Order* The District Court does not explicitly state why it believes it to be a threat or a classroom disturbance, the Court does state in the fine print of the Dismissal Order “"we live in a time when school violence is an unfortunate reality that educators must confi-ont on an all too frequent basis," and that "[s]chool administrators must be vigilant and take seriously any statements by students resembling threats of violence." *Dismissal Order, internal citations omitted.* The District Court implicitly says that merely stating the facts of an event in an ongoing conversation is enough to warrant suspension. While it goes without question that school staff must be vigilant, they do not have absolute power to suspend students over items that are clearly not threats. Nowhere in the conversation did anyone mention any intent to do harm, or method, or plan, or contact with a person who could. Simply talking about the news and how to prevent it from happening cannot possibly be a threat. As to class disturbance, this fails as well because I was the only one targeted for

being in the conversation because I was reciting the facts of the case and not simply saying how the event was bad, saying the event is bad is a truism. Therefore, I conclude there is a substantial claim of a First Amendment violation.

VI. SUMMARY FOR REMAND AND ORDER

In summary, I have presented an argument that there is substantial merit on Due Process and on the First Amendment claims. If the Court does adopt my arguments in full, I ask this Court to remand the case to District Court with orders to appoint counsel. If the Court does adopt my arguments on substantial claim, I ask this Court to remand this case down to District Court with orders to fully apply the ***Hodge*** test, and in compliance with this Court's Opinion and Order. If this Court denies my arguments, I ask this Court to permit petition of Writ of Certiorari and to enter into the record, an Opinion an analysis of the factual issues of this matter.

(SIGNATURE REDACTED)

J.F.S, *a minor child*

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